

REMARKS

Claims 1-20 were rejected, claims 3 and 16 have been cancelled, and claims 1-2, 4-15, and 17-20 have been amended.

Claim 1 has been amended to recite a method including logging a customer into a restaurant pre-dining system with a mobile phone of the customer unit (see, for example, the subject application, page 9, lines 1-3 and 8-10), responsive to logging the customer into the restaurant pre-dining system, placing the customer on a waiting list for a table (see, for example, the subject application, page 13, lines 10-12), paging the mobile phone with a page that notifies the customer that the table is ready for the customer (see, for example, the subject application, page 13, line 20-page 14, line 3), sending an interactive restaurant menu to the mobile phone (see, for example, the subject application, page 10, lines 11-14; page 14, line 21-page 15, line 4), receiving at least one customer request of at least one service of the restaurant from the mobile phone (see, for example, the subject application, page 15, line 15-page 16, line 2), uploading, by a post-dining system of the restaurant, a bill for the at least one service from a point of sale system of the restaurant to the mobile phone (see, for example, the subject application, page 11, lines 5-6; page 17, lines 7-8), and performing a customer self-checkout whereby payment for the at least one service is submitted by the customer unit via the mobile phone to the point of sale system (see, for example, the subject application, page 11, lines 1-2 and lines 10-12; and page 18, lines 1-5 and 11-15). Claim 10 has been amended in a similar manner. No new matter has been introduced by and of the amendment to the claims.

Reconsideration of the claims is respectfully requested in light of the above amendments and following remarks.

I. Rejections Under 35 U.S.C. §103**Claim 1**

Amended claim 1 recites the following:

1. A method of restaurant customer management, comprising:
 logging a customer unit into a restaurant pre-dining system with a mobile phone of the customer;

responsive to logging the customer unit into the restaurant pre-dining system, placing the customer unit on a waiting list for a table;
paging the mobile phone with a page that notifies the customer that the table is ready for the customer unit;
sending an interactive restaurant menu to the mobile phone;
receiving at least one customer request of at least one service of the restaurant from the mobile phone;
uploading, by a post-dining system of the restaurant, a bill for the at least one service from a point of sale system of the restaurant to the mobile phone; and
performing a customer self-checkout whereby payment for the at least one service is submitted by the customer unit via the mobile phone to the point of sale system.

Claim 1 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,844,893 to Miller et al. ("Miller") in view of U.S. Patent Application Publication No. 2002/0147647 to Ragsdale-Elliott et al. ("Ragsdale"). Applicant traverses this rejection on the grounds that these references are defective in establishing a *prima facie* case of obviousness with respect to claim 1.

As the PTO recognizes in MPEP § 2142:

... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...

It is submitted that, in the present case, the examiner has not factually supported a *prima facie* case of obviousness for the following, mutually exclusive, reasons.

1. Even When Combined, the References Do Not Teach the Claimed Subject Matter

The Miller and Ragsdale patents cannot be applied to reject claim 1 under 35 U.S.C. § 103(a) which provides that:

A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains ... (Emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, since neither Miller nor Ragsdale teaches a method of restaurant customer management including logging a customer unit into a restaurant pre-dining system with a mobile phone of the customer unit, responsive to logging the customer unit into the restaurant pre-dining system, placing the customer unit on a waiting list for a table, paging the mobile phone with a page that notifies the customer unit that the table is ready for the customer unit, sending an interactive restaurant menu to the mobile phone, receiving at least one customer request of at least one service of the restaurant from the mobile phone, uploading, by a post-dining system of the restaurant, a bill for the at least one service from a point of sale system of the restaurant to the mobile phone, or performing a customer self-checkout whereby payment for the at least one service is submitted by the customer unit via the mobile phone to the point of sale system as is claimed in claim 1, it is impossible to render the subject matter of claim 1 as a whole obvious, and the explicit terms of the statute cannot be met.

With regard to the claim 1 limitation of “receiving at least one customer request of at least one service of the restaurant from the mobile phone”, the Examiner alleged (See Office Action dated 25 July 2008, Page 3) that Miller discloses a software program that receives at least one customer request of at least one service from a restaurant at the following passage:

The invention offers advantages in that state-of-the-art technology can be showcased as part of the restaurant. This includes both the videoconferencing components and other components such as new software and the like. In fact, new software can be tried out by the public without the need for purchasing, such capability not existing in local retailers. Further, by the presence of waiters in the restaurant, hands-on knowledge is readily available to users when questions or problems arise with one or more of the features of the system and method. In addition, the restaurant will have the hardware capability to optimize the software, such capability not always available to individuals on their home or business computers. For example, state of the art hardware in terms of graphics capability, RAM, and the like will be available to enhance software performance.

The combination of a networked system in a public setting, i.e., a restaurant, also offers the advantage that, as the network grows, so does the strength of the system, increasing exposure, revenues and customer appeal.

As such, an invention has been disclosed in terms of its preferred embodiments

and is directed to an improved system and method combining dining, videoconferencing and multi-media access in a restaurant environment. Miller, Column 8, Line 53-Column 9, Line 8.

Applicant respectfully disagrees. Here, Miller generally describes videoconferencing and multimedia access that may be implemented in a restaurant. Miller in no manner describes or suggests a method of receiving at least one customer request of at least one service of the restaurant from a mobile phone. For at least this reason, a *prima facie* case of obviousness has not been provided, and withdrawal of the rejection of claim 1 is thus requested.

With regard to customer self checkout, the Examiner has alleged that Ragsdale discloses a customer self-check out and payment processing system and cited the following passage of Ragsdale:

As depicted in FIG. 4, a payment of bill menu 70 is shown as an elemental and exemplary feature of the maitre d' system and method 9, wherein a patron(s) has the option of activating the menu 70 by selectively touching a location 72, 74, 76, 78, 80, 82 and 84 for processing menu order payments via credit card, debit card, telecheck or voucher, by cash, with waiter or maitre d' and reviewing trivia or filling out an on-line customer satisfaction survey, respectively. As noted, the customer satisfaction survey 84 will automatically come up for the patron P to fill out or prompt to by-pass prior to check out. Payment confirmation can be received by electronic signature or receipt or by receiving an actual hard copy or paper receipt from the waiter/waitress. **This particular feature provides central processing for the restaurant, however each touch screen unit can be made to dispense a paper receipt as conventionally performed in electronic self serve electronic transaction stations** (eg. gas stations, etc.). As in FIG. 2, all menus as exemplary described for FIGS. 3 and 4 will include the outer touch locations 32, 34, 36, 38, 40, 42, 44 and 46 as standard menu touch locations programmed to allow a user to navigate back and forth thru the menu system, accordingly.

Ragsdale, Paragraph 0053 (**Emphasis Added**).

Here, Applicant notes that the bill menu is provided via a touch screen unit. As described by Ragsdale, touch screen units are deployed at restaurant tables. For example, Ragsdale states the following with regard to touch screen units:

A waitress/waiter W equipped with a hand-held palm size pager unit 22 with multi-line scrolling and buffer capabilities for sending and receiving 2-way interactive electronic messages would forward a received message to the chef or short order cook C via wireless transceiver 12 electrically connected to the computer 10 or reply to a respective patron P via a selective **touch screen terminal 18** having a 2-way speaker 18a configured for direct voice messaging. A

plurality of such terminals 18 can be selectively placed at various table and seating areas for enabling corresponding communication with a selective waiter/waitress W having a pager unit 22 configured for receiving wireless messages from a select group of patrons per table or per group of tables.

Ragsdale, Page 3, Paragraph 36 (in part, **emphasis added**).

...[E]ach pager 22 is programmed to provide specific restaurant menu items with similar program features stored on a personal computer system which is accessed by a customer or patron P, via the **touch screen activation terminal 18 located at a patron's table**.

Ragsdale, Page 3, Paragraph 45 (in part, **emphasis added**).

Thus, Ragsdale is clear that the touch screen terminal via which a customer interacts is a device deployed at a restaurant table. Ragsdale in no manner describes or suggests service selection or self-checkout mechanisms that are made via a mobile phone of a customer unit. For at least this reason, a *prima facie* case of obviousness has not been provided, and withdrawal of the rejection of claim 1 is thus requested.

Further, neither Miller or Ragsdale describe or suggest a restaurant customer management mechanism that includes logging a customer unit into a restaurant pre-dining system with a mobile phone of the customer unit, responsive to logging the customer unit into the restaurant pre-dining system with a mobile phone, placing the customer unit on a waiting list for a table, paging the mobile phone with a page that notifies the customer unit that the table is ready for the customer unit, nor sending an interactive restaurant menu to the mobile phone.

For at least these reasons, the Examiner's burden of factually supporting a *prima facie* case of obviousness with regard to claim 1 has clearly not been met, and the rejections under 35 U.S.C. §103 should be withdrawn. Further, amended claim 10 recites similar features as claim 1. For at least these reasons discussed above, the Examiner's burden of factually supporting a *prima facie* case of obviousness with regard to claim 10 has not been met, and the rejection of claim 10 under 35 U.S.C. §103 should be withdrawn.

Claim 18

Amended claim 18 recites the following:

18. A method of splitting a customer bill on a terminal device comprising:

identifying a number of people at a table;
identifying a person associated with a restaurant menu item;
splitting at least one restaurant item between at least two people;
monitoring a bill balance;
splitting the bill balance into at least two bills each respectively associated with one of the people at the table; and
closing the at least two bills for each of the associated people at the table.

Claim 18 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Miller in view of U.S. Patent No. 6,848,613 to Nielsen et al. ("Nielsen"). Applicant traverses this rejection on the grounds that these references are defective in establishing a *prima facie* case of obviousness with respect to claim 18.

As the PTO recognizes in MPEP § 2142:

... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...

It is submitted that, in the present case, the examiner has not factually supported a *prima facie* case of obviousness for the following, mutually exclusive, reasons.

1. Even When Combined, the References Do Not Teach the Claimed Subject Matter

The Miller and Nielsen references cannot be applied to reject claim 18 under 35 U.S.C. § 103(a) which provides that:

A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains ... (Emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, since neither Miller nor Nielsen teaches a method of identifying a person associated with a restaurant menu item as is claimed in claim 18, it is impossible to render

the subject matter of claim 18 as a whole obvious, and the explicit terms of the statute cannot be met.

With regard to the claim 18 limitation of identifying a person associated with a restaurant menu item, the Examiner cited the following passage of Miller as allegedly disclosing such a method step:

Management equipment includes a CD-ROM server, a satellite dish, satellite coordination hardware, central servers, wireless mobile control computers, and wizard booth consoles. In a preferred mode, real time information, much like airline reservation systems use, is employed as part of the reservation process and linking customers for actual dining. For example, reservations would be taken and a scheduling system would be employed to check availability for each restaurant. If availability exists, reservations are made. When customers arrive in each location, a host(ess) or reservation specialist would link a party in one restaurant with a party in another restaurant. Preferably, such linking would be done with a drop and drag computer screen system whereby, the specialist could merely drop down a menu and drag an icon or the like representing one party, say in New York, to another icon or the like representing another party in Paris to make the video connection. Other systems as are known in the art can also be utilized.

Miller, Column 8, Lines 7-24.

Applicant respectfully disagrees. Here, Miller describes a reservation system and a mechanism for linking a parties in different restaurants. Miller does not in any manner describe or suggest identifying a person associated with a restaurant menu item. For at least this reason, the Examiner's burden of factually supporting a *prima facie* case of obviousness with regard to claim 18 has clearly not been met, and the rejection of claim 18 under 35 U.S.C. §103 should be withdrawn.

II. Conclusion

As a result of the foregoing, it is respectfully asserted that claims 1-2, 4-15, and 17-20 are in a condition for allowance. Should the Examiner deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the below listed telephone number.

Respectfully submitted,



Andrew Silver

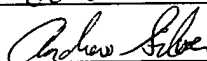
Dated: 27 October 2008
5830 Silver Spurs Trail
Frisco, TX 75034
Telephone: 972/814-4490

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